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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ALEXANDER KAMB
Junior Party
(Patent No. 6,090,578),

v.

DAVID H. BEACH, DOUGLAS J. DEMETRICK,
MANUEL SERRANO AND GREGORY J. HANNON,
Senior Party
(Application No. 09/016,869).

Patent Interference No. 105,459 (MPT)
(Technology Center 1600)

Judgment – Preliminary Motions - Bd. R. 127

Before: SALLY G. LANE, MICHAEL P. TIERNEY, and
JAMES T. MOORE Administrative Patent Judges.
TIERNEY, Administrative Patent Judge.

The Board has entered a Decision on Motions in this interference.
(Paper 60). As discussed in the Decision, Kamb's involved claims are
unpatentable as anticipated by Beach's U.S. Patent 5,889,169 under

1 35 U.S.C. § 102(e). Kamb did not seek to antedate the November 18, 1993
2 effective filing date of Beach's '169 patent nor did Kamb file a priority
3 statement alleging a date of conception earlier than Beach's earliest
4 accorded filing date, which is also November 18, 1993. Accordingly, Kamb
5 is unable to contest priority of invention. 37 C.F.R. § 41.204. Based upon
6 the facts presented, we decline to continue the interference. Judgment is
7 entered against Kamb.

8 It is:

9 **Ordered** that judgment on priority of invention as to Count 1, the sole
10 count in interference, is awarded against Kamb.

11 **Further Ordered** that Kamb is not entitled to Kamb, U.S. Patent
12 6,090,578, claims 2-3, both of which correspond to Count 1.

13 **Further Ordered** that claims 2-3 of Patent 6,090,578 be
14 CANCELED, 35 U.S.C. § 135(a).

15 **Further Ordered** that a copy of the Decision and Judgment be placed
16 in the files of Kamb, U.S. Patent 6,090,578, and Beach, U.S. Application
17 09/016,869.

18 **Further Ordered** that should there be a settlement agreement, the
19 parties' attention is directed to 35 U.S.C. § 135(c) and Bd. R. 205.

/Michael P. Tierney/)
MICHAEL P. TIERNEY)
Administrative Patent Judge)

/James T. Moore/)
JAMES T. MOORE)
Administrative Patent Judge)

/Sally Gardner Lane/)
SALLY GARDNER LANE)
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Subject: Interference 105459 (MPT), Paper No. 60-Decision-Bd.R. 125, Paper No. 61-Judgment-Preliminary Motions-Bd.R. 127

Attachments: 105459 060.pdf; 105459 061.pdf

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